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*Date:* SEP 12 2016  
*Symbol:* EPC-DO-16-243  
*LA-UR:* 16-26484  
*Locates Action No.:* N/A

Mr. John E. Kieling  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505

**RECEIVED**

SEP 12 2016

**NMED**  
**Hazardous Waste Bureau**

Dear Mr. Kieling:

**Subject: Los Alamos National Laboratory (LANL) Comments Regarding New Mexico Environment Department - Hazardous Waste Bureau (NMED-HWB) Satellite Accumulation Area Policy, July 6, 2016 DRAFT**

This letter provides comments and recommended changes to the referenced draft Satellite Accumulation Area (SAA) policy, as submitted by the Department of Energy/Nuclear Security Administration (DOE/LANS) and Los Alamos National Security, LLC (LANS) (the "LANL Permittees"). The LANL Permittees appreciate the opportunity to comment on this draft policy, and offer comments in Enclosure 1. Enclosure 3 provides recommendations to improve the draft policy in redline/strikeout format.

The LANL Permittees appreciate NMED's intent to provide guidance and assistance to hazardous waste generators regarding compliance with 40 CFR §262.34(c) and would appreciate NMED-HWB's consideration of changes to the draft policy to clarify the following areas:

- Definition and clarification of "at or near the point of generation"
- Definition and clarification of "under the control of the operator/generator"
- Designation of an entire room as an SAA.

With regard to these issues and others, the Permittees offer several suggestions to provide more definitive guidance. The Permittees would prefer to see the NMED's use of case-by-case review for determining the compliance of an SAA be far more limited than is inferred in the draft policy. For the few exceptional instances where case-by-case review must be used, NMED-HWB should provide a more structured process with a specified time frame and documentation requirements.



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Hazardous Waste Bureau

The LANL Permittees would be pleased to meet with NMED-HWB staff to discuss these comments and recommendations further. Please contact Mark P. Haagenstad (LANS) at (505) 665-2014 or Karen Armijo (NNSA) at (505) 665-7314 if you have questions or to arrange a meeting.

Sincerely,



Anthony R. Grieggs  
Group Leader  
Environmental Compliance Programs (EPC-CP)  
Los Alamos National Security, LLC  
Los Alamos National Laboratory

Sincerely,



Karen E. Armijo  
Permitting and Compliance Program Manager  
National Nuclear Security Administration  
Los Alamos Field Office  
U.S. Department of Energy

ARG:KEA:MPH:GEM/lm

Enclosures:

1. Los Alamos National Laboratory (LANL) Comments on the New Mexico Environment Department - Hazardous Waste Bureau (NMED-HWB) Satellite Accumulation Area Policy, July 6, 2016 DRAFT
2. 1996 LANL SAA Policy
3. LANL's Proposed Revisions to NMED's Draft SAA Policy

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# **ENCLOSURE 1**

**Los Alamos National Laboratory (LANL) Comments on  
the New Mexico Environment Department - Hazardous  
Waste Bureau (NMED-HWB) Satellite Accumulation Area  
Policy, July 6, 2016 DRAFT**

**EPC-DO-16-243**

**LA-UR-16-26484**

**Date: SEP 12 2016**



## Enclosure 1

### LANL Comments on the New Mexico Environment Department - Hazardous Waste Bureau Satellite Accumulation Area Policy, July 6, 2016 DRAFT

NMED draft text	LANL Questions/comments
<p><b>I. Purpose</b></p> <p>This policy was prepared by the New Mexico Environment Department ("NMED") Hazardous Waste Bureau ("HWB") for generators of hazardous waste that manage waste in a Satellite Accumulation Area ("SAA"). This policy replaces any existing policies, letters, memoranda of understanding, or agreements with any New Mexico facilities. This document is intended to provide guidance and assistance to hazardous waste generators in complying with the SAA requirements under 40 C.F.R. § 262.34(c), and to ensure all generators are operating similarly and regulated consistently. This policy is intended to clarify HWB's position and expectations regarding compliance with 40 C.F.R. 262.34(c).</p>	<p>1. The LANL Permittees appreciate NMED's intent (i.e., to provide guidance and assistance to hazardous waste generators, and clarify HWB's position and expectations regarding compliance with 40 CFR 262.34(c)). However, we believe that the areas EPA left rather broad and vague (especially defining "at or near the point of generation" and "under the control of the operator") are those areas for which the regulated community is in most need of clarification. The LANL Permittees will offer recommendations below and in Enclosure 3 to help NMED achieve this purpose.</p>
<p>HWB recognizes that due to the great variability of plant design and process layout, every scenario cannot be addressed in this policy. Questions concerning this subject should be directed to the HWB Compliance and Technical Assistance Program.</p>	<p>2. The LANL Permittees agree. However, this makes even more critical the need for NMED's process for requesting and approving exceptions to be very clearly spelled out (see our specific comments on this topic below).</p>
<p><i>The information in this Policy is provided for guidance purposes only. The policy is not a regulation; therefore, it does not add, delete, or change any existing regulatory requirements.</i></p>	<p>3. Because this document presents unenforceable guidance, the LANL Permittees would appreciate clarification on how NMED intends to use the final policy with regards to compliance and enforcement.</p> <p>4. In addition, LANL would like to see NMED provide an implementation "grace period" following issuance of the final policy that would allow the regulated community time to implement any changes in practices they must make in order to comply fully with its requirements.</p>
<p><b>II. Satellite Accumulation Rule</b></p> <p>The federal regulations governing standards applicable to generators of hazardous waste at 40 CFR 262.34(c) (the "Satellite Accumulation Rule") provide as follows:</p>	<p>No comment.</p>

NMED draft text	LANL Questions/comments
<p>(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:</p> <p>(i) Complies with §§ 265.171, 265.172, and 265.173(a) of this chapter; and</p> <p>(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.</p> <p>(2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.</p>	
<p><b>III. Discussion</b></p> <p><i>What is the Intent of the Satellite Accumulation Rule?</i></p> <p>Section 262.34(c) was promulgated in the December 20, 1984, Federal Register 49568. The U.S. EPA stated that satellite accumulation is intended for industries that generate small amounts of hazardous waste in numerous locations at a facility not to exceed 55-gallons of hazardous waste or 1 quart of acute hazardous waste in a SAA. The SAA regulation is designed to allow for reduced storage requirements (i.e. accumulation time) as well as other requirements for the generator (i.e., inspections, contingency plan, personnel training plan and preparedness and prevention arrangements), where the hazardous waste generation complies with threshold limits.</p>	<p>No comment.</p>
<p><i>What is Point of Generation?</i></p>	



NMED draft text	LANL Questions/comments
<p>The point of generation is where and when hazardous waste first becomes subject to regulation, with respect to the location and the process that is generating the waste. The point of generation usually occurs at a distinct step in the manufacturing or laboratory process. Point of generation examples include a waste exiting a process unit into a pipe or container, paint overspray exiting a spray paint gun, a rag or wipe after it is used to clean a part with a solvent, or when waste exits an air pollution control system.</p>	<p>5. We recommend stating specifically, as EPA did in the preamble to its September 25, 2015 proposed rule<sup>1</sup>, that the point of generation is the point at which a material becomes a solid waste, since the hazardous waste determination depends on first identifying that a solid waste has been generated and whether it is exempt or excluded from the definition. We believe this would further clarify the first (underlined) sentence in this paragraph.</p>
<p><i>What is "at or near" the Point of Generation?</i> RCRA Section 262.34(c)(1) specifies that a generator may accumulate wastes "in containers at or near any point of generation where wastes initially accumulate, which is under control of the operator of the process generating the waste." Once the maximum capacity of 55 gallons of hazardous waste or one quart of acutely hazardous waste has been reached, the excess waste must be dated and transferred to a central storage accumulation area within 3 days.</p>	<p>No comment.</p>
<p>EPA did not define "at or near" by a specific distance from the generating process. When evaluating whether or not the satellite accumulation container is at or near the point of generation, the generator should consider the location of generated waste and initial storage.</p>	<p>6. We suggest that NMED include here language describing the other key reason why clearly determining "at or near the Point of Generation" is so important. EPA spelled out that reason in the preamble to its September 25, 2015 proposed rule<sup>2</sup>, as follows:</p> <p>"To respond to generator concerns about identifying the most appropriate point at which to make a hazardous waste determination, EPA is proposing to revise § 262.11 to add a paragraph (a), which would state that a hazardous waste determination must be made at the point of waste generation (<i>i.e.</i>, when the material becomes a solid waste).<sup>(59)</sup>... By requiring that the initial hazardous waste determination be made at the point of generation, the regulation clarifies that the determination cannot be made downstream in the process where other materials could be mixed with the waste or where the waste changed its physical characteristics simply as a result of time elapsing affecting the hazardous waste determination. This standard must be met even in instances in which another entity, such as a waste management facility, makes the waste determination on behalf of the generator."</p>

<sup>1</sup> EPA, *Improvements to the Hazardous Generator Regulatory Program (Parts 261, 262, 264 and 265): Proposed Rule*. Fed. Reg. 80(186): 57918-58012, September 25, 2015, page 57938.

<sup>2</sup> *Ibid.*, page 57936.

NMED draft text	LANL Questions/comments
<p>HWB generally expects that a SAA will be located in the same room as the point of generation. However, HWB recognizes that there are scenarios where location of the SAA in the same room as the point of generation may not always be possible, for various reasons. Such scenarios will need to be dealt with on a case-by-case basis. For instance, a waste accumulation container maintained immediately outside an enclosed paint booth, or outside a "clean room" production area for safety reasons, may meet the SAA criteria.</p>	<p>7. The LANL Permittees appreciate NMED's acknowledgement that location of the SAA in the same room as the point of generation is not always possible. However, we disagree with NMED's conclusion that every exceptional situation must be handled case-by-case via a formal exception process such as the one NMED is proposing here. While a formal process may be needed in very limited cases, LANL believes that NMED should be able to elaborate more on its general criteria addressing how to determine suitable siting of an SAA for these types of operations, rather than requiring every single exceptional case to be formally reviewed and approved by the Department. LANL will provide suggested language in Enclosure 3.</p>
<p>In determining whether a particular SAA is "at or near" the point of generation, HWB will consider the following criteria:</p> <ol style="list-style-type: none"> <li>1. Whether other options for locating the SAA closer to the point of generation have been evaluated and the reasons such options have been found unsuitable;</li> <li>2. Potential safety risks attendant to the location of the SAA and/or transport of the wastes from the point of generation to the SAA; and</li> <li>3. Whether the operator of the process generating the waste retains control over the SAA (see discussion below regarding what is meant by "under the control" of the operator).</li> </ol>	
<p>Where a generator is considering locating a specific SAA somewhere other than in the same room as the point of generation, or if other safety or contamination concerns are identified by the generator when evaluating a potential location for the SAA, the generator should contact the HWB Compliance and Technical Assistance Program in advance to discuss specific options. In proposing a particular location for a SAA, the generator should be prepared to justify the selection of the proposed location with respect to the above criteria.</p>	<p>8. LANL will provide suggested language in Enclosure 3 recommending that instead of referring every siting question to the HWB, the generator retain the primary responsibility for determining if their site-specific circumstance complies with the SAA regulations and maintain detailed justification supporting their decision. At the same time, generators should be strongly encouraged to seek guidance from the HWB in advance; however, circumstances sometimes prevent a generator from doing so.</p> <p>9. If, however, NMED intends to review every special situation, LANL strongly advises NMED to create a more formal process having very specific submission criteria (for example, defining or giving examples of potential safety risks) and a very specific time frame for NMED review and approval/rejection of a request.</p>
<p><i>What is under the control of the operator?</i></p> <p>It is acceptable for waste from multiple processes to be managed in one SAA as long as the processes contributing waste are in close proximity to one another and are under the control of the operator of those processes. Generators are relieved from the weekly inspection and log</p>	<p>10. The LANL Permittees support allowing waste from multiple processes to be managed in one SAA as long as the processes contributing waste are in close proximity to one another and are under the control of the operator. LANL offers additional</p>

NMED draft text	LANL Questions/comments
<p>requirements for SAAs because of the presumption that the operator will be able to observe the container at the production process area on a daily basis and ensure that the proper conditions are maintained. The operator must ensure compatibility of all wastes managed in SAAs. Because the operator of a satellite accumulation container is knowledgeable of the process generating the waste, unknown wastes would not be expected in a SAA.</p>	<p>recommendations for ensuring operator control below.</p> <p>Controls for SAAs such as locked cabinets, closets, rooms and even containers are not mentioned, yet these controls have been recognized by EPA and NMED-HWB as acceptable methods for compliance with the "under the control of the operator" requirement. We would like to see NMED expand on this discussion, and provide a clearer set of criteria defining the conditions under which multiple users are allowed to use the same SAA. EPA<sup>3</sup> has stated as follows:</p> <p>"In an effort to assist generators to better understand this term and to foster improved compliance with the SAA provisions, the Agency is providing examples in this preamble of what constitutes 'under the control of the operator.' For example, EPA would consider waste to be 'under the control of the operator' if the operator controlled access to an area, building, or room that the SAA is in, such as with entry by access card, key or lock box. Another example would be if the operator accumulates waste in a locked cabinet and controlled access to the key, even if the cabinet is stored inside a room to which access is not controlled."</p> <p>The LANL Permittees disagree with the perceived NMED presumption that the operator will be able to observe the SAA at the production process area on a constant or daily basis in order to ensure that the proper conditions are maintained. It is, however, operationally feasible for the operator to ensure and maintain access control to the SAA.</p> <p>As NMED is aware, LANL embraces these principles and has adopted similar requirements in its internal SAA policy (Enclosure 2), which was reviewed and approved by NMED in 1996 and has been in effect ever since. The LANL Permittees recommend that NMED include requirements similar to LANL's for physical and administrative control in its final policy, including an "authorized user" concept similar to that in place at LANL.</p> <p>12. Multiple users at LANL may generate the same waste stream (and therefore use the same Waste Stream Profile to characterize it), and share use of the same SAA if appropriate. In such circumstances, generators on the list of "authorized users" of an SAA are the only waste generators that may use that SAA. These generators must be trained according to the current LANL waste management policy and guidance, and must be generally familiar with their particular SAA's operating system and with its contents, in order to prevent any potential for inappropriate mixing or storage of incompatible wastes.</p>

<sup>3</sup> Ibid., at 57966.

NMED draft text	LANL Questions/comments
	<p>One person is considered the primary generator (with authority and responsibility for the Waste Stream Profile). That person generally will also be the designated "operator" of the SAA who is ultimately responsible for inspection, maintenance, and access control of that SAA.</p> <p>13. Unknown wastes are an occasional, unintended consequence of years of production and research activities, and may be intermittently generated because of lab cleanouts or legacy waste discoveries. In such situations, facilities need a mechanism such as a &lt;90 day area to provide a compliant management scenario for unknown wastes. LANL internal policy already prohibits collection or storage of unknown wastes in SAAs.</p> <p>The LANL Permittees offer examples of needed additions to the policy in Enclosure 3.</p>
IV. Additional Information	
<p>While the preamble to the final rule that added 262.34(c) states that "only one waste will normally be accumulated at each satellite area," the regulations do not limit the number of hazardous wastes or the number of containers that can be placed in an SAA. It is permissible to have more than one hazardous waste container in a SAA; however, the regulations limit the total volume of hazardous waste at a single SAA to 55 gallons (or 1 quart of acute hazardous waste). Likewise, the regulations do not limit the total number of SAAs at a generator's facility.</p>	<p>14. Several other key topics and questions are not addressed here by NMED although they have been previously addressed by EPA to varying degrees in guidance (such as the EPA "Frequently Asked Questions" document) or regulatory preambles.</p> <p>The LANL Permittees offer examples of suggested additions to the policy regarding some of these unanswered questions in Enclosure 3.</p>
<p>With respect to what constitutes a single SAA versus separate SAAs, the determination will depend on the particular circumstances. Some guidance on that point is offered in EPA's statement in the preamble to the final rule for SAAs, providing that <u>"a row of full 55 gallon drums spaced 5 feet apart along the factory wall."</u> is not a row of distinct SAAs, but is one SAA.</p>	<p>15. The final sentence in this paragraph (see underlined text at left) is misleading as written because EPA did not say this was an example of one SAA. A row of full 55 gallon drums would never meet the definition of a single SAA in compliance with the regulations. We recommend replacing the underlined phrase with the text as written on page 49569 of <i>Federal Register</i> Vol. 49, No. 246, December 20, 1984, as follows:</p> <p style="padding-left: 40px;">"a row of full 55 gallon drums spaced 5 feet apart along the factory wall does not meet the requirements established by this regulation."</p> <p>16. It should also be noted that although EPA elected not to provide an explicit definition of the term "satellite accumulation area" in 40 CFR 260.10 or elsewhere in the regulation, a definition is provided on this same page of <i>Federal Register</i> Vol. 49, No. 246, December 20, 1984, as follows:</p>

NMED draft text	LANL Questions/comments
	<p>"Satellite areas are those places where wastes are generated in the industrial process or the laboratory and where those wastes must initially accumulate prior to removal to a central area. This point of accumulation is under the control of the operator of the process that is generating the waste."</p> <p>It may be helpful to include this definition in the draft policy.</p>
<p>EPA has compiled a memorandum titled "Frequently Asked Questions About Satellite Accumulation Areas". This document provides detailed responses to various questions concerning SAAs. HWB can provide a copy if requested.</p>	<p>17. By referencing this EPA guidance, the LANL Permittees assume that NMED is adopting and endorsing EPA's questions and answers as written. If so, rather than provide a reference, we would prefer to see NMED incorporate EPA's questions and answers explicitly into this policy. The LANL Permittees offer recommendations in this regard in Enclosure 3.</p> <p>At a minimum, however, the LANL Permittees would recommend that NMED provide a hyperlink to the EPA "Frequently Asked Questions" document (RCRA Online Number 14703), such as <a href="https://yosemite.epa.gov/osw/rcra.nsf/documents/8c9f6dc8b378a2f585256e9900723a8b">https://yosemite.epa.gov/osw/rcra.nsf/documents/8c9f6dc8b378a2f585256e9900723a8b</a></p>



## **ENCLOSURE 2**

**1996 Los Alamos National Laboratory (LANL)  
Satellite Accumulation Area Policy**

**EPC-DO-16-243**

**LA-UR-16-26484**

**Date: SEP 12 2016**





# Los Alamos

Los Alamos National Laboratory  
Los Alamos, New Mexico 87545

## memorandum

TO: Distribution

FROM: Geri Rodriguez, ESH-19 *GR*

SYMBOL: ESH-19:96-0227

SUBJECT: SATELLITE ACCUMULATION AREA (SAA) POLICY

DATE: June 18, 1996

MAIL STOP/TELEPHONE: K490/7-6259

The Environment, Health and Safety Division (ESH-DO) received concurrence on the Satellite Accumulation Area (SAA) Policy from the New Mexico Environment Department (NMED) on May 31, 1996. Effective immediately the SAA policy has become Laboratory policy. A 45 day grace period is given to implement this policy on all SAAs from the date of this memo.

Attached is the SAA policy and the concurrence memo from NMED. If the policy cannot be implemented in 45 days please call Michelle Cash at 5-0223 or e-mail [cash@lanl.gov](mailto:cash@lanl.gov).

If you have any questions please call me at 7-6259.

GR:em

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Cy: SAHSA File  
HSWS Circ File

# SAA Policy

- supplement to Laboratory Standards & Administrative Requirements 10-3

A Satellite Accumulation Area (SAA) is an area for the collection of hazardous and/or mixed wastes. The SAA may accumulate as much as 55 gallons of such waste or one quart of acutely hazardous waste and serve a process, a room or a suite of rooms.

All users of an SAA will have their name and waste profile numbers on the respective containers or have an inventory system. An inventory system may include, but is not limited to, a log sheet/book which indicates the type of waste put in a container, by whom, when and the volume, where generated and have a cumulative volume total. Labeling of all containers is still required.

Physical and/or administrative controls must govern access to every SAA to prohibit unauthorized access to or use of the SAA.

Physical controls can be assured by access control to the area or room including, but not limited to, door locks and cabinet locks. All outside SAAs must have physical controls.

Administrative controls must include, but are not limited to,

- 1) a consultation with the designated Waste Management Coordinator prior to the establishment of the SAA,
- 2) the posting of the name and phone number of the SAA's primary contact, and
- 3) the establishment of a list of "authorized users" of the SAA. The persons on this list are the only waste generators that may use this SAA and these generators must be trained according to AR 10-3 and be generally familiar with their particular SAA operating system and also familiar with the contents in the SAA.

If different waste generators generate the same waste stream, they may agree to share a waste container.

If at any time the Waste Generator anticipates difficulty in following this policy the Waste Management Coordinator must be contacted for guidance.



GARY E. JOHNSON  
GOVERNOR

State of New Mexico  
**ENVIRONMENT DEPARTMENT**  
*Hazardous & Radioactive Materials Bureau*  
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MARK E. WEIDLER  
SECRETARY

EDGAR T. THORNTON, III  
DEPUTY SECRETARY

May 31, 1996

Dennis J. Erickson, Director  
ESH Division  
Mail Stop K491  
Los Alamos National Laboratory  
Los Alamos, NM 87545

Dear Mr. Erickson:

**RE: Satellite Accumulation Area (SAA) Policy**

The Hazardous and Radioactive Materials Bureau (HRMB) has reviewed LANL's proposed SAA Policy. HRMB believes that where this policy is implemented as proposed, compliance with the provisions of 40 CFR §262.34(c) concerning storage of hazardous waste "at or near the point of generation" and "under the control of the operator of the process generating the waste" will be achieved. HRMB also believes that the physical and administrative controls as defined in the policy will serve as acceptable management techniques provided one or both are specifically followed by SAA managers. Therefore, HRMB generally concurs with this proposed policy and encourages its implementation.

Thank you for your interest in this matter. If you have any questions, please contact me at (505) 827-1558.

Sincerely,

A handwritten signature in cursive script, reading "Coby Muckelroy".

Coby Muckelroy  
RCRA Inspection/Enforcement Program Manager  
Hazardous and Radioactive Materials Bureau

xc: Michelle Cash, ESH-19, MS K498, Los Alamos National Laboratory  
RCRA Inspection Group Staff



# **ENCLOSURE 3**

**Los Alamos National Laboratory's (LANL's)  
Proposed Revisions to NMED's Draft SAA Policy**

**EPC-DO-16-243**

**LA-UR-16-26484**

**Date: SEP 12 2016**



## **Enclosure 3**

### **LANL Redline Copy**

## **New Mexico Environment Department - Hazardous Waste Bureau Satellite Accumulation Area Policy, July 6, 2016 DRAFT**

### **I. Purpose**

This policy was prepared by the New Mexico Environment Department ("NMED") Hazardous Waste Bureau ("HWB") for generators of hazardous waste that manage waste in a Satellite Accumulation Area ("SAA"). This policy replaces any existing policies, letters, memoranda of understanding, or agreements with any New Mexico facilities. This document is intended to provide guidance and assistance to hazardous waste generators in complying with the SAA requirements under 40 C.F.R. § 262.34(c), and to ensure all generators are operating similarly and regulated consistently. This policy is intended to clarify HWB's position and expectations regarding compliance with 40 C.F.R. 262.34(c). HWB recognizes that due to the great variability of plant design and process layout, every scenario cannot be addressed in this policy. Questions concerning this subject should be directed to the HWB Compliance and Technical Assistance Program.

*The information in this Policy is provided for guidance purposes only. The policy is not a regulation; therefore, it does not add, delete, or change any existing regulatory requirements.*

### **II. Satellite Accumulation Rule**

The federal regulations governing standards applicable to generators of hazardous waste at 40 C.F.R. 262.34(c) (the "Satellite Accumulation Rule") provide as follows:

- (1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in § 261.31 or § 261.33(e) in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) of this section provided he:
  - (i) Complies with §§ 265.171, 265.172, and 265.173(a) of this chapter; and
  - (ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.
- (2) A generator who accumulates either hazardous waste or acutely hazardous waste listed in § 261.31 or § 261.33(e) in excess of the amounts listed in paragraph (c)(1) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with paragraph (a) of this section or other applicable provisions of this chapter. During the three day period the generator must continue to comply with paragraphs (c)(1)(i) and (ii) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.





### III. Discussion

#### *What is the Intent of the Satellite Accumulation Rule?*

Section 262.34(c) was promulgated in the December 20, 1984, *Federal Register* 49568. The U.S. EPA stated that satellite accumulation is intended for industries that generate small amounts of hazardous waste in numerous locations at a facility not to exceed 55-gallons of hazardous waste or 1 quart of acute hazardous waste in a SAA. The SAA regulation is designed to allow for reduced storage requirements (i.e. accumulation time) as well as other requirements for the generator (i.e., inspections, contingency plan, personnel training plan and preparedness and prevention arrangements), where the hazardous waste generation complies with threshold limits.

#### What is a Satellite Accumulation Area?

Satellite areas are those places where wastes are generated in the industrial process or the laboratory and where those wastes must initially accumulate prior to removal to a central area. This point of accumulation is under the control of the operator of the process that is generating the waste. (Reference: EPA, SAA final rule, *Federal Register* Vol. 49, No. 246, December 20, 1984, page 49569)

#### *What is Point of Generation?*

The point of generation is where and when hazardous waste first becomes subject to regulation, with respect to the location and the process that is generating the waste. The point of generation usually occurs at a distinct step in the manufacturing or laboratory process. Point of generation examples include a waste exiting a process unit into a pipe or container, paint overspray exiting a spray paint gun, a rag or wipe after it is used to clean a part with a solvent, or when waste exits an air pollution control system.

Some facilities have equipment to which hazardous waste containers are attached. In its memorandum entitled "Frequently Asked Questions About Satellite Accumulation Areas" (reference below), EPA states that "(T)he container(s) attached to such equipment is a point of generation. It is possible for there to be multiple pieces of equipment within one SAA, and thus multiple points of generation with in a single SAA, provided all the pieces of equipment are "at or near" each other and "under the control of the operator of the process generating the waste."

On September 25, 2015, EPA proposed to revise § 262.11 to clarify that a hazardous waste determination must be made at the point of waste generation (i.e., when the material becomes a solid waste. EPA's intent is that the waste determination not be made downstream in the process, "where other materials could be mixed with the waste or where the waste changed its physical characteristics simply as a result of time elapsing affecting the hazardous waste determination. This standard must be met even in instances in which another entity, such as a waste management facility, makes the waste determination on behalf of the generator."

#### *What is "at or near" the Point of Generation?*

RCRA Section 262.34(c)(1) specifies that a generator may accumulate wastes "in containers at or near any point of generation where wastes initially accumulate, which is under control of the operator of the process generating the waste." Once the maximum capacity of 55 gallons of hazardous waste or one quart of acutely hazardous waste has been reached, the excess waste must be dated and transferred to a central storage accumulation area within 3 days.

EPA did not define "at or near" by a specific distance from the generating process. When evaluating whether or not the satellite accumulation container is at or near the point of generation, the generator should consider the location of generated waste and initial storage. For example, a facility



in which the same waste stream is generated at multiple points in one very large production room is advised to divide the room into sections of manageable size for purposes of locating an SAA within each section. This will allow each SAA to be managed under the control of an operator assigned to that section of the production room.

HWB generally expects that a SAA will be located in the same room as the point of generation. However, HWB recognizes that there are scenarios where location of the SAA in the same room as the point of generation may not always be possible, for various reasons. ~~Such scenarios will need to be dealt with on a case-by-case basis.~~ For instance, a waste accumulation container maintained immediately outside an enclosed paint booth, or outside a "clean room" production area for safety reasons, may meet the SAA criteria, provided the wastes are being managed properly according to 40 CFR Section 262.34(c)(1)(i) and (ii), and the SAA meets the criteria for "under the control of the operator" established below.

In determining whether a particular SAA is "at or near" the point of generation, ~~HWB will the generator should~~ consider the following criteria:

1. Whether other options for locating the SAA closer to the point of generation have been evaluated and the reasons such options have been found unsuitable;
2. Potential safety risks attendant to the location of the SAA and/or transport of the wastes from the point of generation to the SAA; and
3. Whether the operator of the process generating the waste retains control over the SAA (see discussion below regarding what is meant by "under the control" of the operator).

Where a generator is considering locating a specific SAA somewhere other than in the same room as the point of generation, or if other safety or contamination concerns are identified by the generator when evaluating a potential location for the SAA, it is recommended that the generator should ~~should~~ contact the HWB Compliance and Technical Assistance Program in advance to discuss specific options.

In ~~proposing-selecting~~ a particular location for a SAA, the generator should maintain documentation on file ~~be prepared to~~ justify the selection of the proposed location with respect to the above criteria, and be prepared to present the justification documents to NMED-HWB upon demand, at any time.

*What is under the control of the operator?*

It is acceptable for waste from multiple processes to be managed in one SAA as long as the processes contributing waste are in close proximity to one another and are under the control of the operator of those processes. Generators are relieved from the weekly inspection and log requirements for SAAs because of the presumption that in most cases, the operator will be able to observe the container at the production process area on a daily basis and ensure that the proper conditions are maintained. The operator must ensure compatibility of all wastes managed in SAAs. Because the operator of a satellite accumulation container is knowledgeable of the process generating the waste, unknown wastes would not be expected in a SAA.

In some circumstances, the operator may not be able to observe the container at the production process area on a daily basis, for example where the SAA must be maintained immediately outside an enclosed paint booth, or outside a "clean room" production area for safety reasons, and the risk of spills during waste transfers are low and can be mitigated via physical controls. EPA stated that it would consider waste to be 'under the control of the operator' "if the operator controlled access to an area, building, or room that the SAA is in, such as with entry by access card, key or lock box. Another example would be if the operator accumulates waste in a locked cabinet and controlled access to the key.



even if the cabinet is stored inside a room to which access is not controlled.” (Reference: EPA, Improvements to the Hazardous Generator Regulatory Program (Parts 261, 262, 264 and 265): Proposed Rule, Fed. Reg. 80(186), September 25, 2015, page 57966).

Some facilities not only have multiple processes but may have multiple generators who would like to share the same SAA. In such circumstances, the SAA must remain under the control of one generator (i.e., the “lead operator”) at all times. For multiple users to be authorized to store their waste in the same SAA, the facility must demonstrate addition control by posting the list of authorized users at the SAA and having each authorized user’s name and a waste profile or other identifying information on the container or a log book. It will remain up to the assigned operator to control access and ensure compliance with volume limits, labeling, container closure requirements, and compatibility of all wastes managed in a multiple-user SAA.

#### **IV. Additional Information**

While the preamble to the final rule that added 262.34(c) states that “only one waste will normally be accumulated at each satellite area,” the regulations do not limit the number of hazardous wastes or the number of containers that can be placed in an SAA. It is permissible to have more than one hazardous waste container in a SAA; however, the regulations limit the total volume of hazardous waste at a single SAA to 55 gallons (or 1 quart of acute hazardous waste). Likewise, the regulations do not limit the total number of SAAs at a generator’s facility.

With respect to what constitutes a single SAA versus separate SAAs, the determination will depend on the particular circumstances. Some guidance on that point is offered in EPA’s statement in the preamble to the final rule for SAAs, providing that “a row of full 55 gallon drums spaced 5 feet apart along the factory wall does not meet the requirements established by this regulation.”

“a row of full 55 gallon drums spaced 5 feet apart along the factory wall,” is not a row of distinct SAAs, but is one SAA.

Some facilities accumulate hazardous wastes in hoods, gloveboxes and benchtops in small quantities. When the small containers are full, or the process is complete, the wastes are transferred to larger containers within the same SAA. EPA, in its memo “Frequently Asked Questions About Satellite Accumulation Areas” (see reference below) stated that “... a single SAA may have multiple points of generation. Movement or consolidation of hazardous waste within an SAA is permissible, as long as it remains “at or near” the “point of generation” and “under the control of the operator of the process generating the waste.”

EPA has compiled a memorandum titled “Frequently Asked Questions About Satellite Accumulation Areas”: (RCRA Online Number 14703), available at <https://yosemite.epa.gov/osw/rcra.nsf/documents/8c9f6dc8b378a2f585256e9900723a8b>. This document provides detailed responses to ~~various additional~~ questions concerning SAAs. HWB can provide a copy if requested.

